

ADMINISTRATIVE OFFICE OF THE COURTS

Giving Legal Advice Versus Providing Legal Information



ACAP Systems Conference

July 21, 2022



Presented By --

Kristin Clark

Director of Legal Services

Administrative Office of the Courts

kristin.clark@arcourts.gov

501 682 9400 Phone

501 682 9410 Fax



Giving Legal Advice Versus Providing Legal Information

Learning Objectives—

At the end of this segment, you will better understand . . .

1. What are the Roles and Responsibilities of Clerks and Court Personnel?
2. What is Legal Advice?
3. What is Legal Information?
- 34 How can I Better Assist Self-Represented Litigants?



What are the roles and responsibilities of clerks and court personnel?

Provide Access to the Courts



What are the roles and responsibilities of clerks and court personnel?

Provide Service with Accurate Information



What are the roles and responsibilities of clerks and court personnel?

Clerks and Court Personnel Must Remain Neutral



What are the roles and responsibilities of clerks and court personnel?

Clerks and Court Personnel Must Remain Impartial



What are the roles and responsibilities of clerks and court personnel?

Clerks and Court Personnel Must Not Engage in
the Unauthorized Practice of Law



What is legal advice?

Legal advice interprets some aspect of the law, court rules, or court procedures.

Legal advice recommends a specific course of action a person should take in an actual or potential legal proceedings.

Legal advice applies the law to the individual person's specific factual circumstances.



What is legal information?

Legal information is general, factual information about the law or legal process that is both neutral and objective.

Legal information does not address any particular cause of action.



Legal Advice

- Tailored to the needs of a specific person
- Tell someone what words to use in court filings or what words to say in court

Legal Information

- Generally available to anyone
- Provide court forms and assist in completing the forms without telling what specific words to write



Legal Advice

- Selecting and telling someone to use specific forms
- Interpreting the law or applying the law to the specifics of a person's case

Legal Information

- Providing forms that a person can choose to use
- Providing general information on court rules, procedures, practices, terms and laws



Legal Advice

- Calculating a deadline to file a court document
- Performing legal research for a party by researching opinions, court rules, statutes, etc.

Legal Information

- Referring someone to the law library for the court rule that establishes the deadline to file a court document
- Referring someone to the judiciary website where links to opinions, court rules, statutes, etc. can be found



What legal information can be provided?

- ☐ Public information contained in dockets, calendars, case files, indexes, and other reports
- ☐ Recite common, routinely-employed court rules, court procedures, administrative practices
- ☐ Explain generally how the court functions
- ☐ Refer self-represented litigants to a legal aid program, law library, or website for statutes, court rules, or forms
- ☐ Answer question about deadlines or due dates without calculating due dates



My friend's dog bit me. Should I sue him?

You need to decide that for yourself. You may want to talk to a lawyer to help you make that decision. If you decide to file a lawsuit on your own, I can give you the small claims complaint form.



What sentence will I get if I plead guilty?

I cannot predict what the judge will do. The judge will decide what sentence to impose based on the facts and the law that apply to your case.



Should I get a lawyer?

You are not required to have a lawyer to file papers or to participate in a case in court. I cannot advise you whether you should hire a lawyer in your case.

Only you can make that decision. Here is a list of organizations that you can contact for free or low-cost legal help, if you qualify.



It says “relief requested” next to this blank on the form. What do I put there?

I can't tell you what words to use, but you should write in your own words what you want the court to do. If you have any questions about the kinds of remedies that may be available in your case, you should consult an attorney.



Can I see the Kramer adoption file?

I'm sorry. Adoption files are confidential and may not be viewed by the public.



Would you look over this form and tell me if I did it right?

You have provided all the required information. I cannot tell you whether the information you provided is correct; only you can know that.



My form got sent back to me from the court because it was incomplete. What is wrong with it?

It looks like you did not provide all of the information requested. Once you have filled that out, I'll be happy to file the form for you.



What should I say to the judge when my case is called?

I can't tell you what arguments to make in court. You will need to decide that for yourself. Legal services may have a handout on this subject on its website.



I have a disability that prevents me from filling out this petition for order of protection form. Would you fill it out for me?

I will help you fill out the form, but you have to tell me what information to write down. I will write down whatever you say and read it back to you to make sure what I have written is correct.



I want to see the judge. Where is the office?

The judge only talks with all parties to a case at the same time. You would not want the judge to talk to the other side about this case if you were not present. The judge will speak to you at your hearing.



What is “ex parte”?

It is a Latin term that refers to one-sided contact with the court. In most cases, ex parte contact with the court is not allowed.



I know that I can't talk to the judge. But, you're nice – could you please take this message to the judge?

I'm sorry, I can't do that for you. It wouldn't be fair for me to present your concerns to the judge when the other side in your case is not there. But, I can help you schedule a hearing with the judge so that both sides in the case can be present.



What is the last day I can file my lawsuit?

The time for filing your case can vary depending on the particular facts involved. Determining the last day to file a lawsuit is difficult to do. You should consult a lawyer to help you figure this out.



I figured out that I have to file my papers 10 days before the hearing, but that day falls on a Sunday. What do I do?

Your situation falls within an exception to the 10-day rule. You must file your papers no later than the next business day.



I need a good lawyer. Who is the best?

I can't refer you to an individual lawyer because a court must remain neutral in all matters. I can give you information about the Arkansas Bar Association's lawyer referral service.



Could you check to see if my property taxes have been paid?

We don't have those kinds of records in this office. You can find that information in the County Tax Collector's office. It is located a few blocks from here. Let me show you how to get there on this map of local government buildings.



Tips

- ☐ Politely explain clerks and court personnel cannot explain or interpret the law or say how it would apply to a case
- ☐ Politely explain that clerks and court personnel do not have legal training and don't want to jeopardize the outcome of a case by giving inaccurate information
- ☐ Use phrases like "generally speaking"



Tips

- ☐ Avoid phrases like “you can” or “you should”
- ☐ Use hypothetical examples
- ☐ Do not give an opinion about the probable outcome



Questions?



Giving Legal Advice Versus Providing Legal Information

Kristin Clark

Director of Legal Services

Administrative Office of the Courts

kristin.clark@arcourts.gov

501 682 9400 Phone

501 682 9410 Fax



Sources

May I help you? A Resource Guide for Court Clerks

Judicial Council of California ▪ Administrative Office of the Courts
Access and Fairness Advisory Committee

Guidelines and Instructions for Clerks and Court Personnel Who Work
with Self-Represented Litigants in Texas State Courts

Texas Office of Court Administration
Texas Access to Justice Commission
Texas Access to Justice Foundation
Texas Legal Services Center